

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

BROADCOM CORPORATION,

Miscellaneous Action Plaintiff,

v.

CINGULAR WIRELESS LLC,

Miscellaneous Action  
Defendant.

MISCELLANEOUS CASE NO. \_\_\_\_\_

Case Pending in the Southern District of California

Case No. 05 CV 1392

**BROADCOM CORPORATION'S MOTION TO COMPEL**

Pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), Defendant Broadcom Corporation ("Broadcom") hereby moves to compel compliance with the third-party subpoena ("Subpoena") issued to Cingular Wireless LLC ("Cingular") from the United States District Court for the District of Delaware. (*See* Ex. 1, Subpoena.) The Subpoena was served on August 30, 2006, and seeks the production of specified documents and one or more designees regarding specified topics.

The only issue presented is whether, and to what extent (if at all) Cingular is entitled to an award of its outside counsel's attorney's fees – notwithstanding applicable law which dictates to the contrary. Beyond this, there are no remaining issues with respect to the scope of the subpoena. Documents have been gathered, and Broadcom seeks an order compelling immediate document production and depositions -- as Cingular has refused to produce the already located,

responsive documents (in an apparent effort to leverage the monetary issue in the face of Broadcom's upcoming trial and other litigation deadlines).<sup>1</sup>

Broadcom's motion should be granted because:

- There are no issues as to burden and scope<sup>2</sup>;
- Cingular is not entitled to an award of its attorneys' fees under applicable law;
- The law does not permit Cingular to hold the (already identified and collected) documents and discovery "hostage" pending resolution of its monetary demands;
- Early in the matter, Broadcom offered to compensate Cingular for its first \$10,000 of out-of-pocket costs, and asked for an estimate of the costs Cingular would incur in responding to the Subpoena. Weeks later, after Cingular had already searched for and gathered the responsive documents and incurred over \$40,000 in attorney's fees, Cingular finally provided an "estimate" of over \$80,000 in fees;
- Notably, despite having no obligation to do so (but in an effort to resolve the dispute), Broadcom has offered to pay Cingular the first \$20,000 in out-of-pocket costs (of an \$80,000+ demand) incurred by Cingular in responding to the Subpoena (in addition to cost of the products, for which Broadcom has already made payment). Broadcom is perplexed and concerned with the volume of asserted, responsive documents--and is calling into question the reasonableness of Cingular's monetary claim;
- Broadcom has been diligent. Cingular has not moved to quash the subpoena. At Cingular's request, Broadcom has granted Cingular several extensions to respond to the Subpoena, only to be met with still further demands that Broadcom pay Cingular's attorney's fees.

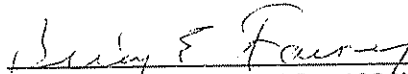
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<sup>1</sup> Cingular has designated two knowledgeable witnesses and, subject has otherwise agreed to produce them for deposition on the on dates certain.

<sup>2</sup> Broadcom has taken reasonable steps to avoid imposing any undue burden on Cingular, resolving all issues pertaining to burden and scope.

In sum, Cingular's demands reflect what may be viewed as an apparent attempt to leverage otherwise unrecoverable attorney's fees—at the eleventh hour of this case. Broadcom respectfully submits that the Court should order Cingular to produce documents and witnesses responsive to the Subpoena on or before **December 22, and December 29, 2006**, respectively (or other dates agreed to by counsel for the parties that are prior to the December 31, 2006 cut-off for this third-party discovery). Broadcom respectfully requests a hearing to resolve this Motion.

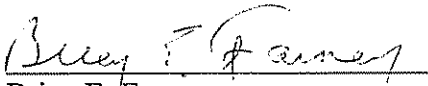
Respectfully Submitted,

By:   
Brian E. Farnan (Bar No. 4089)  
PHILLIPS GOLDMAN & SPENCE, P.A.  
1200 N. Broom Street  
Wilmington, DE 19806  
(302) 655-4200  
(302) 655-4210 (fax)  
[bef@pgslaw.com](mailto:bef@pgslaw.com)

OF COUNSEL:  
MCANDREWS, HELD & MALLOY, LTD.  
JEAN DUDEK KUELPER  
THOMAS J. WIMBISCUS  
GREGORY C. SCHODDE  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661  
Telephone: (312) 775-8000  
Facsimile: (312) 775-8100

RULE 7.1.1 CERTIFICATION

Counsel for Broadcom Corporation hereby certifies that opposing counsel was contacted in an effort to resolve this issue to no avail.

  
Brian E. Farnan

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**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2006, having considered the Motion to Compel Compliance with Subpoena Served on August 30, 2006 (the "Motion") filed by the Miscellaneous Action Plaintiff, Broadcom Corporation ("Broadcom"), and any response thereto, it is hereby ORDERED and DECREED that the Motion is GRANTED;

It is further ORDERED and DECREED that the Miscellaneous Action Defendant, Cingular Wireless, LLC ("Cingular"), shall produce to Broadcom on or before December 22, 2006 all documents responsive to the third-part subpoena (the "Subpoena") served on it by Broadcom on August 30, 2006;

It is further ORDERED and DECREED that Cingular shall produce to Broadcom on or before December 29, 2006 all witnesses responsive to the Subpoena.

BY THE COURT

\_\_\_\_\_  
U.S.D.J.

I, Brian E. Farnan, certify that I caused to be served upon the following counsel and parties of record a copy of BROADCOM CORPORATION'S MOTION TO COMPEL via personal service, overnight courier (Via Federal Express), facsimile or first class mail, as indicated below:

Michele Powers, Esq.  
WESTON, BENSHOOF,  
ROCHEFORT, RUBALCAVA MacCUISSH LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 576-1000  
Facsimile: (213) 576-1100

*Attorneys for Subpoenaed Third-  
Party Cingular Wireless*

**Via Personal Service (consented to be served on behalf  
of Cingular Wireless LLC, a Delaware corporation, on  
or about December 7, 2006)**

*Attorneys for Plaintiff*

Barry Jerome Tucker, Esq.  
**HELLER EHRMAN LLP**  
4350 La Jolla Village Drive, 7th Floor  
San Diego, California 92122  
Telephone: (858) 450-8478  
Facsimile: (858) 450-8499  
**barry.tucker@hellerehrman.com**

**Via Overnight Courier & E-mail**

*Attorneys for Plaintiff*

James R. Batchelder, Esq.  
**DAY CASEBEER MADRID & BATCHELDER LLP**  
20300 Stevens Creek Boulevard, Suite 400  
Cupertino, California 95014  
Telephone: (408) 873-0110  
Facsimile: (408) 873-0220  
**jbatchelder@daycasebeer.com**  
**cmammen@daycasebeer.com**

**Via Overnight Courier & E-mail**

*Attorneys for Plaintiff*

Nitin Subhedar, Esq.  
**HELLER & EHRMAN LLP**  
275 Middlefield Road  
Menlo Park, California 94025  
Telephone: (650) 324-7000  
Facsimile: (650) 324-0638  
**nitin.subhedar@hellerehrman.com**

**Via Overnight Courier & E-mail**

  
BRIAN E. FARNAN